IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORIGINAL SIDE JURISDICTION

SUMMONS FOR JUDGMENT. 167 OF 2003
IN
SUMMARY SUIT NO. 3769 OF 2002

Smt. Kamudi P. Kothari .. Plaintiff.
vs.
Central Warehousing Corporation & Anr. ..Defendants.

Mr. N.J. Ratnani, Advocate for the Plaintiff.
Mr. S.I. Shah, Advocate for the Defendants.

CORAM: D.G. DESHPANDE, J.
DATE : 22ND SEPTEMBER, 2004.

P.C. :-

1. Heard the learned Advocate for the Plaintiff and the Defendants. The Plaintiff had given her premises to the Defendant Central Warehousing Corporation, a statutory body in the Central Government on the basis of written agreement between the parties at Exhibit-B on 15th October, 1997 for a period of three years. However, before the expiry of the said period of three years, the Defendant wrote a letter to the Plaintiff about dehiring of the godown prior to the letter dated 18th August, 1999 Exhibit-D. The Plaintiff filed a suit for recovering the rent of the remaining period of the lease i.e. from 1st

December, 1999 till 14th October, 2000 and has taken out this Summons for Judgment.

2. The Summons for judgment is dated 7th February, 2003. It was served on the Defendant on 1st March, 2003. When the matter came before me for hearing about two weeks, no reply was filed by the Defendant to the Summons for Judgment. Therefore, I heard the matter on that day and again it was heard on couples of occasion and finally today the matter was heard. The learned Counsel for the Defendant states that there is an arbitration clause in the Agreement Exhibit-B and therefore the matter is required to be referred to the Arbitration. Secondly, according to her the claim is time barred because it is a claim for monthly rent and the limitation for monthly rent will have to be calculated from the expiry of each month for which the rent is claimed. Thirdly, according to her, the Agreement was not sufficiently stamped and registered.. Therefore, the Plaintiff cannot make any claim on the basis of unregistered and unstamped document. Fourthly, according to her the tenancy was determinable at the option of the lease as per clause 1 of the said agreement.

3. So far as the dispute of arbitration is concerned,

the Counsel for Plaintiff relied upon a Judgment of this Court reported in 2003(2) ALL MR page 608. In this case, the Hon'ble Court (Rebello, J) after considering all the relevant provisions as held that even if there is arbitration clause there is alteration the jurisdiction of the Civil Court. However the person trying to invoke the Arbitration clause in a suit as to take out objection in this regard at the earliest. The Summons for Judgment this case was served upon the Defendants in March, 2003 and the Summons for Judgment came before me for hearing on 2nd September, 2004. Till then the Defendant has no where raised any objection that the matter should be referred to Arbitration. There is therefore inordinate delay in raising the objection and on the basis of aforesaid Judgment it is to be stated that the Defendant has waivery right of referring the dispute to Arbitration.

4. Secondly, the objection of the Defendant that the document is unstamped and unregistered and therefore cannot be used is absolutely without any merit. It is on the basis of this document that the Defendant's got possession of the godown. They used it for some time and therefore now they cannot be permitted to contend that because the document is unstamped and unregistered the Plaintiffs should not be permitted to use it. A person

who is reaping the benefit from the said agreement or from a suit cannot be permitted to however dishonour the benefit or disown the origin of his returns and even otherwise the document unregistered and unstamped can be used for collateral purpose namely for proving delivery of possession and facts about possession.

5. Regarding the third contention, that Defendant has right to terminate the lease on time as per their choice is also not supported by the agreement Exhibit-B Clause 1 the portion of which was read over to me was as under, "It is agreed specifically that the tenancy hereby created shall be determinable on the option of the leasee and lessor only after three years by giving one months notice in advance". It is to be noted that this a single composition sentence expressing the rights of the parties. There is no division made in this sentence about granting or conferring any specifics or special right to the Defendant. The period of lease therefore fixed by three years is therefore not terminable at the option of the Defendant according to their choice.

6. As regards the fourth submission on limitation is concerned, learned Counsel for the Plaintiff pointed out that they have claimed rent from 1st December, 1999 upto

14th October, 2000. the suit is filed on 9th October, 2002 which is within the limitation period. Therefore there is no defence available nor there is any substance in the contentions raised. Therefore the conditional leave on depositing Rs.10 Lakhs within six weeks from today is granted to the Defendant.

sd/-

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